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In the

Supreme Court of the United States

October Term, 19[illegible]

No. 74-[illegible]

DEREK THOMAS AKRIDGE,

*Petitioner,*

vs.

ANTHONY BARBER, Chief of Police and
THE CITY OF NEWARK,

*Respondents.*

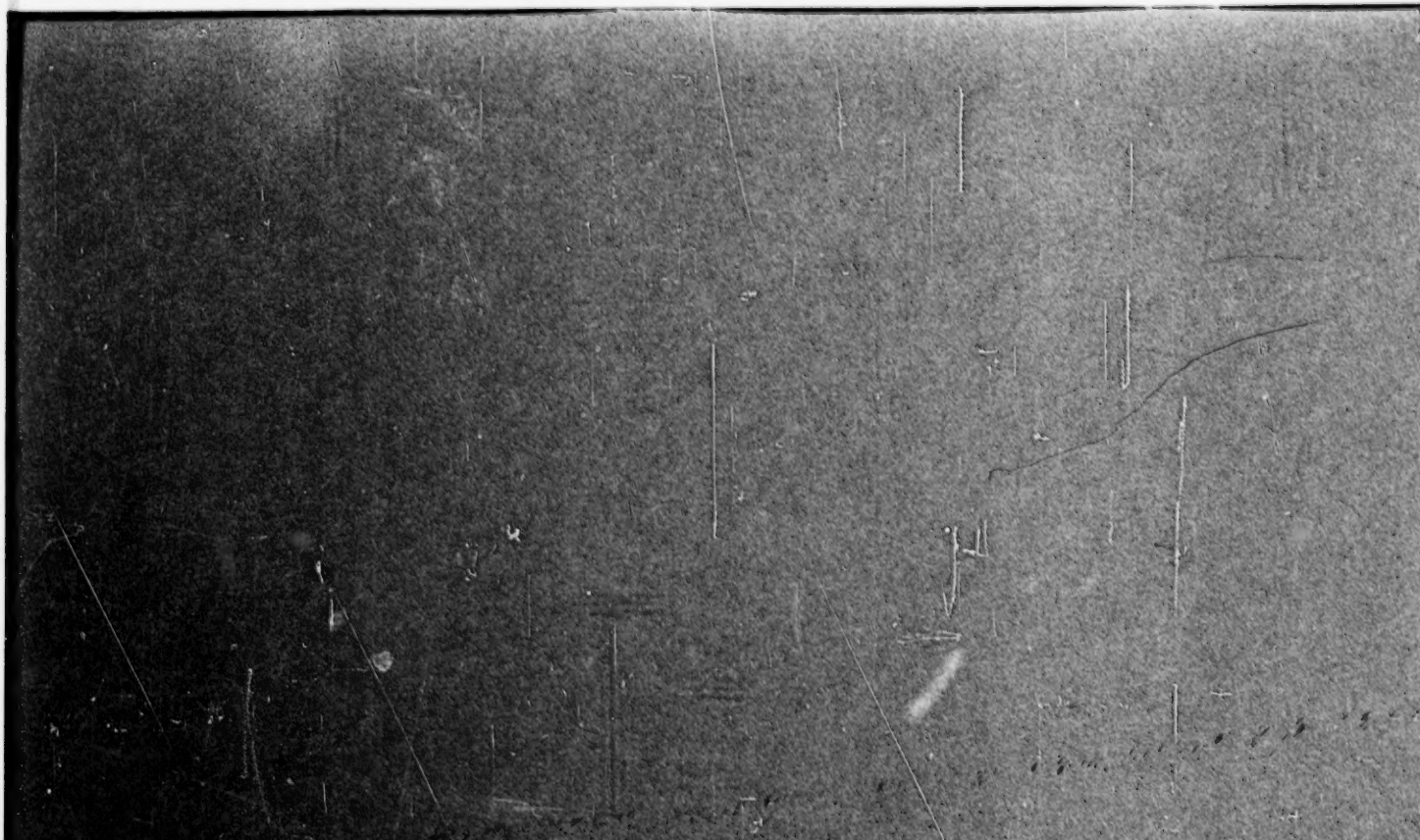
On Petition for a Writ of Certiorari to the
Supreme Court of New Jersey

# BRIEF IN OPPOSITION

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IN THE

# Supreme Court of the United States

OCTOBER TERM OF 1974

**No. 74-338**

DEREK THOMAS AKRIDGE,

*Petitioner,*

*vs.*

ANTHONY BARRES, Chief of Police and
THE CITY OF NEWARK,

*Respondents.*

**On Petition for a Writ of Certiorari to the Supreme Court of New Jersey**

## BRIEF IN OPPOSITION

### Opinions Below

The opinion of the Supreme Court of the State of New Jersey is reported at 65 N. J. 266 and 321 A. 2d 230 (1974).

The opinion of the Appellate Division of the Superior Court of the State of New Jersey is reported at 122 N. J. Super. 476 (App. Div. 1973) and 300 A. 2d 866.

The opinion of the Chancery Division of the Superior Court of New Jersey is reported at 118 N. J. 557 Super. (Ch. Div. 1972) and 289 A. 2d 270.

## Jurisdiction

The jurisdiction of this Court is contained in 28 U.S.C. § 1257 (3) and 28 U.S.C. 2101(c).

## Statement of Questions Presented

Whether Special Order No. 71-15 of the Newark, New Jersey, Police Department which sets standards of hair style and facial growth for Newark police officers constitutes an unconstitutional infringement of a police officer's rights under the First Amendment of the Constitution.

Whether Special Order No. 71-15 constitutes a reasonable regulation of any rights a police officer may have under the First Amendment and Due Process Clause of the Fourteenth Amendment.

## Statement of the Case

On March 23, 1971, the Newark, New Jersey, Police Department promulgated Special Order No. 71-15 which purported to set standards of appearances for hair styles and facial hair growths for members of the Newark Police Departemnt. The full text of Special Order No. 71-15 is found in Petitioner's Appendix C.

Petitioner, a black member of the Newark Police Department, refused to wear his hair and facial growth in compliance with Special Order No. 71-15. Departmental charges were brought against petitioner and after a hearing before the Police Director was found guilty of violating Special Order No. 71-15. He received a fine of five days pay.

Petitioner then challenged the constitutionality of Special Order No. 71-15 in the Chancery Division of the Superior Court of New Jersey. That Court on March 29, 1972, rejected the challenge holding that Special Order No. 71-15 was "reasonable, and more importantly in a legal sense, appears to lie well within the scope of the responsibilities given to those charged with running the Newark Police Department" (Petitioner's Appendix C).

Petitioner then appealed to the Appellate Division of the Superior Court of New Jersey. After briefs and oral argument, the Appellate Division affirmed the Chancery Division and rejected the argument that petitioner's First Amendment rights were infringed upon. (Petitioner's Appendix B).

Certification was then granted to the Supreme Court of New Jersey and on June 26, 1974, the opinion of the Appellate Division was affirmed *per curiam*. Two justices dissented. (Petitioner's Appendix A).

This petition followed.

## *REASONS FOR DENYING WRIT*

### 1. Special Order No. 71-15 does not violate any of petitioner's First Amendment rights.

Petitioner argues that Special Order No. 71-15 is an unconstitutional restriction of his right of "free speech" in that the way he wears his hair and facial growth is expressive in nature. He theorizes, but has never demonstrated, that his hair and style and facial growth positively assists him in working with Newark's black community (TR49-51 of hearing before Police Director).

Respondents respectfully submits that the trend of the cases is against petitioner's position. In *United States* v. *O'Brien,* 39 U.S. 367, 20 L. Ed. 2d 672, 88 S. Ct. 1673 (1968), appellant was convicted of burning his draft card. One of his grounds for challenging the appropriate federal statute was that his act of burning his draft card was "symbolic speech" protected by the First Amendment because it constituted a demonstration against the Vietnam War and the draft system. This Court rejected that idea stating:

> "We cannot accept the view that an apparently limitless variety of conduct can be labeled 'speech' whenever the person engaging in the conduct intends thereby to express an idea." 30 L. Ed. 2d at p. 679.

The subject of hair length has been at issue in several cases around the nation. A leading case is *Olff* v. *East Side Union High School District,* 404 U.S. 1042, 30 L. Ed. 2d 736, 92 S. Ct. 7703 (1972), cited as *King* v. *Saddleback Junior College District,* 445 F. 2d 932 (9th Cir. 1971). These school dress codes setting length of hair limitations

were challenged on First Amendment grounds. The Court of Appeals rejected this argument explaining:

> "In the cases before us, *neither of the regulations* on its face indicates a conflict with freedom of speech. There was no evidence that either regulation was enacted by the respective school authorities with such a purpose in mind."
>
> • • •
>
> ". . . On the contrary, a male student could express his personality by means of his hair at any length, between a short hair cut and a long one limited only so that the hair did not fall below the collar in back." 445 F. 2d at p. 937.

In *Richards* v. *Thurston*, 424 F. 2d 1281 (1st Cir. 1970) (collecting cases) hair length and style was found to be without the scope of the First Amendment. The Court exclaimed:

> ". . . We recognize that there may be an element of expression and speech involved in one's choice of hair length and style, if only the expression of disdain for conventionality. However, we reject the notion that plaintiff's hair length is of a sufficiently communicative character to warrant the full protection of the First Amendment. • • • That protection extends to a broad panoply of methods of expression, but as the van-verbal message becomes less distinct, the justification for the substantial protection of the First Amendment becomes more remote." 424 F. 2d at p. 1283.

Respondents respectfully submit that hair length and facial growth regulations are not within the scope of the First Amendment and that the matter has been settled by

the cases in the area. Petitioner has never demonstrated that the length of his hair or his mustache was in any way communication. Nor did he ever contend that the length of his hair was in any sense a protest. See, *Tinker* v. *Des Moines Independent Community School District*, 393 U.S. 503, 89 S. Ct. 733, 21 L. Ed. 2d 731 (1969).

**2. Special Order No. 71-15 constitutes a legitimate and reasonable regulation of a police officer's personal appearance.**

A police department is a *quasi* military organization whose members are subject to reasonable regulations dealing with discipline and morals *Ward* v. *Kennan*, 3 N.J. 298 (1949); *City of Newark* v. *Massey*, 93 N.J. Super. 317 (App. Div. 1967); 16 McQuillin, *Municipal Corporations* (3rd Ed., 1972 rev'd vol.), Sec. 45, 16, p. 621.

In *Stradley* v. *Andersen*, 478 F. 2d 188 (8th Cir. 1973) a police officer challenged a departmental order setting standards of hair style and facial growth for police officers. The order was challenged on constitutional grounds. The Court rejected arguments that hair styles are within the scope of the First Amendment and the Due Process Clause of the Fourteenth Amendment. The Court stated:

> "Traditionally, the policeman has been a highly trained officer who is entrusted with a responsible and often-times dangerous role as a public servant. His work habits on active duty require disciplined conduct, regimentation, and frequent strict adherence to regulation and authorized detail. His job is often a delicate and difficult to lawfully act against those who are sometimes unwilling to recognize any rules or ethics. It is essential that a policeman's training be such that he be taught to obey

> strict disciplinary procedure and rules in order to lend practical assurance that he will follow command and not abuse his awesome authority. As part of this discipline, the Police Department has determined that an officer shall be neat in his appearance. There can be little argument that this requirement constitutes a legitimate departmental interest." Id. at p. 190.
>
> "We reject the idea that community standards provide a legtimate basis in weighing constitutional rights guaranteed to the individual. Whether public acceptance or rejection of a particular hair style exists in one community or another should not be a standard concern to a Federal Court." *Id.* at p. 190
>
> • • •
>
> "One may argue that how one wears his hair has little to do with whether an officer might affectively apprehend criminals or otherwise fulfill his assigned mission as a policeman. This misses the work. The critical factor is that police officialdom deems it necessary that the officer be well disciplined and that as part of that internal discipline, he be required to maintain a neat appearance. The degree of that appearance, as long as it is not arbitrary or unreasonable, should not be the Court's concern." *Id.* at pp. 190-191

Similar reasoning was applied in *Owen* v. *Barry,* 336 F. Supp. 487 (E. D. N. Y. 1971). There the Court, in reviewing a dress code for policeman said:

> ". . . How the police officer appears to the public is one factor in effective law enforcement. . . . It would be inappropriate for the court to frame such regulations, absent a clear showing of a violation of a constitutional right." *Id.* at pp. 487-488

Regulation by the public of non speech elements of freedom of expression was officially sanctioned in *United States* v. *O'Brien, supra.* Their draft card burning was held to be a form of expression which could be restricted if there was a legitimate governmental interest to foster. 20 L. Ed. 2d at p. 680. See, also, *Anderson* v. *Laird,* 437 F. 2d 912 (7th Cir. 1971) (hair regulations for National Guard member); *King* v. *Saddleback Junior College District,* supra.

Petitioner relies heavily on *Pickering* v. *Board of Education,* 39 U. S. 563, 20 L. Ed. 2d 811, 88 S. Ct. 1731 (1968). However, that case involved actual speech on the part of a public official and not the so called "symbolic speech" at issue in the present case. Moreover, it is submitted, the "balancing test" set forth in *Pickering* must lead to a different conclusion where a police officer is involved. Cf., *Muller* v. *Conlisk,* 429 F. 2d 901 (7 Cir. 1970).

## CONCLUSION

**For the reasons stated, respondent respectfully submits that this petition for writ of certiorari be denied.**

Respectfully submitted,

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**Certificate of Service**

I, Matthew J. Scola, attorney for Respondents, Anthony Barres, Chief of Police and The City of Newark, do hereby certify that I did send three copies of the foregoing Brief on the following:

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Attorney of record for Petitioner, by mailing the same to him by regular mail.

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